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ABSTRACT

This report examines employment opportunities for women and minorities in the Alabama State government. The employment actions of State officials in the wake of the United States versus Frazer decision in which the State was found guilty of discrimination against blacks are also examined. Comments made by George C. Wallace and other State officials and Alabama employment statistics provide the basis for the report. Background information on employment practices in Alabama and on the Frazer court case is provided. Specific actions taken by the State to promote affirmative action in government employment are discussed. Policies and practices undertaken by individual government agencies to extend opportunitites for mobility and to make employment tests more equitable for women and minorities are reviewed. Tables provide data on Alabama employees by race and sex in various job categories from 1973 to 1977, and on the occupational distribution of State and local government employees. Recommendations made by the Advisory Committee for improving the employment status of women and minorities in the Alabama State government are outlined. (EB)

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OCT 1 0 1979

Where Are Women and Blacks?

PATTERNS OF EMPLOYMENT IN ALABAMA GOVERNMENT

—A report prepared by the Alabama Advisory Committee to the U.S. Commission on Civil Rights

March 1979

ED177272

ATTRIBUTION:

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Letter of Transmittal

Alabama Advisory Committee to
the U.S. Commission on Civil Rights
March 1979

MEMBERS OF THE COMMISSION
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Louis Nuñez, *Acting Staff Director*

Sirs and Madam:

The Alabama Advisory Committee submits this report, *Where are Women and Blacks?* a study of employment patterns in Alabama State government, as part of its responsibility to advise the Commission about civil rights problems in this State.

This report and the documentary film that it complements deal not only with the status of women and minorities who work for the State, but with the attitudes and actions of State officials in the wake of the *United States v. Frazer* decision in which the State was found guilty of discrimination against blacks. Although the State has begun to move toward equal opportunity in employment, blacks represent only 15 percent of the State's employees; they comprise 22 percent of the work force. White women, however, are not underrepresented in State government; they, like minorities, are relegated to low-paying, stereotypical jobs. Unlike blacks, an equal chance for the employment of women is not being overseen by the U.S. district court.

Governor George C. Wallace and other State officials were interviewed in the course of the Advisory Committee study. Their comments and the employment statistics they provided are the basis for this report and the recommendations that are included.

The Advisory Committee determined that the importance of equal opportunity ought to be instilled in many Alabama administrators through inservice training and disciplinary action if necessary. Further, it is recommended that the Governor appoint more women and blacks to key State boards and commissions both to serve as an example to State administrators and to capitalize on the expertise of such persons who have been long neglected.

Realizing that Alabama's top officials want to ensure equal opportunity for their own citizens rather than have the Federal Government and courts continue to do so, the Advisory Committee recommends that the State enact and enforce its own fair employment practice law as many other States have done.

In the interim, however, the Advisory Committee urges that the Federal Government exercise its full authority in the enforcement of equal opportunity law in the State of Alabama. Specifically, we call on the U.S. Commission on Civil

OCT 12 1979

Rights to urge the U.S. Department of Justice to expand the *United States v. Frazer* suit to include women and urge the President's Office of Management and Budget to direct the Federal Regional Council of Region IV to coordinate a comprehensive civil rights compliance review of all Alabama agencies.

Sincerely,

Marie Stokes Jemison, *Chairperson*
Alabama Advisory Committee

Alabama Advisory Committee to the United States Commission on Civil Rights

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ACKNOWLEDGMENTS

The Alabama Advisory Committee is grateful to the staff of the Commission's Southern Regional Office in Atlanta, Georgia, for its help in conducting the State employment study.

The project was the principal assignment of Miriam Grayboff, equal opportunity specialist, who wrote this report in addition to producing the film that this report accompanies. Mark Schneider, regional attorney, provided legal counsel, Katie Harris, research-writer, provided editorial assistance, and Joan Harper furnished secretarial support services. All worked under the supervision of Bobby Doctor, Regional Director, and Idalia Morales, Deputy Regional Director. Dr. Ki-Taek Chun, Deputy Director of the Commission's Office of Research, furnished technical assistance.

Deborah A. Harrison, Vivian M. Hauser, and Audree B. Holton, Publications Support Center, Office of Management, were responsible for final preparation of the document for publication.

Preface

The Alabama Advisory Committee to the U.S. Commission on Civil Rights produced a 12-minute, 16 mm. color film that, like this report, reviews patterns of employment in Alabama State government. The film, also titled *Where are Women and Blacks?* is available for public use at no cost. Arrangements should be made through the U.S. Commission on Civil Rights, Southern Regional Office, 75 Piedmont Avenue, Atlanta, Georgia 30303 (phone: (404) 221–4391).

This report and the film are based primarily on recorded interviews with elected officials, agency administrators, and employees of Alabama. Unless noted otherwise, statements in this report are taken from recordings of those interviews. Employment data was made available by the Alabama Personnel Department, the U.S. Department of Justice, the U.S. District Court of the Middle District of Alabama, and the U.S. Department of Labor, Bureau of Labor Statistics. Illustrated data used in the exhibits, both in the film and the report, were provided by the Alabama Personnel Department, unless otherwise noted.

The Advisory Committee is grateful to U.S. District Court Judge Frank R. Johnson, Jr., Governor George C. Wallace, John Stanley Frazer, director of the Alabama Personnel Department, and other State officials and employees for their cooperation during this study.

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1. Background

The Right to Earn

Work can de defined as the chance to compete for jobs on an equal basis. The Alabama Advisory Committee to the U.S. Commission on Civil Rights decided at a public meeting held in Birmingham on August 19, 1976, that the opportunity to work was the most important rights issue of the day. Especially among those traditionally denied the opportunity to earn a living wage—minorities and women—jobs are critical because of the current state of the economy. The Advisory Committee, therefore, agreed to investigate State employment practices in Alabama.

With more than 25,000 persons on its payroll, the State is the largest single employer in Alabama. Recipient of nearly $1 billion a year in Federal money,[1] Alabama is subject to myriad laws proscribing discrimination not only in disbursement of those funds but in employment practices as well. Furthermore, the employment patterns and practices of all State agencies have been judged racially discriminatory—a court finding unprecedented in any other State.

Judged and Found Wanting

In Montgomery, the day after the Advisory Committee focused on denial of equal employment rights for women and minorities, Frank R. Johnson, Jr., Federal judge of the U.S. District Court for the Middle District of Alabama, issued a judgment regarding the Alabama Personnel Department's practices and policies. In this judgment, his third in the 10-year-old case of *United States* v. *Frazer,* [2] Judge Johnson found clear and compelling evidence of systematic employment discrimination against blacks.[3]

In most State agencies, blacks comprised under 10 percent of the employees[4]—less than half the blacks' 25 percent representation in Alabama's population and their 22 percent in the work force.[5]

Resisting strong urging by the plaintiff to specify hiring goals, the court warned that if substantial progress were not made by State agencies in 1 year, then imposed goals would be the only alternative. However, Judge Johnson expressed his reluctance to set goals and stated, "Mandatory hiring quotas must be a last resort. Such a reluctance is particularly appropriate in a case involving every agency of the State of Alabama."[6]

Cognizant of the State's past record in school desegregation, voting rights, minority political representation, and prison reform, the Advisory Committee was concerned that the State of Alabama might be playing again a "the court is making us" game. Could voter-sensitive officials be waiting for the Federal judge to impose goals and timetables rather than voluntarily implementing affirmative action programs throughout State government? The possibility was not remote.

One high level Alabama administrator, who had been in State government for 20 years, commented to a Commission staff member that "until it was definitely decided what the law of the land was, there was a right to resist, right?"

History of Resistance

The remark conjured up the early days of the struggle for the civil rights of blacks. It was in Montgomery, Alabama, more than two decades ago that Rosa Parks defied local custom—and law—and went to jail for refusing to yield her bus seat to a white man. And it was in the Dexter Avenue Baptist

[1] U.S., Department of Treasury, "Federal Aid to the States," 1977, p. 1.
[2] See United States v. Frazer, 14 EPF par. 7599 (D. M.D. Ala. 1976) (order granting supplemental relief in 317 F. Supp. 1079 (M.D. Ala. 1970) that was issued after the ruling in 297 F. Supp. 319 (M.D. Ala. 1968)). See also, NAACP v. Dothard, 493 F.2d 614 (5th Cir. 1974).
[3] 14 EPD par. 7599, at 4930.
[4] *Id.* at 4937, 4948; Also Jerome Weidler, assistant attorney general for Alabama, telephone interview, Mar. 21, 1978.
[5] U.S., Department of Labor, Bureau of Labor Statistics, "Geographic Profiles of Employment and Unemployment Statistics," 1978.
[6] 14 EPD par. 7599, at 4933.

Church across from the Alabama State Capitol that Martin Luther King, Jr., a young black minister who had graduated from Boston University, drew upon the woman's act of passive resistance to inspire all blacks to boycott city transportation until the Jim Crow ordinance was ruled unconstitutional and blacks could claim their right to equal acccess to public places.

The right to equal employment opportunity for blacks in Alabama has been just as difficult to attain. This "battle" also is being waged in the courts. In 1968 the U.S. Department of Justice brought suit against seven Alabama State government agencies charging discrimination based upon race. Later, in 1973, virtually all State agencies became defendant parties in the *Frazer* case. The single department excluded from the current suit, public safety, was already hiring under a court-ordered, quota plan after a discrimination suit was won by the National Association for the Advancement of Colored People.[7]

The *Frazer* case was the first employment discrimination lawsuit filed against virtually all departments of a State government. In recent years, the U.S. Department of Justice has sought relief for minorities in statewide suits against three other States, South Carolina, North Carolina, and New Hampshire. All four statewide suits are on the basis of racial discrimination. Most suits involving sex discrimination in State or municipal government employment have been brought against individual agencies—usually those in law enforcement—and waged against male-oriented height and weight requirements.[8]

Advisory Committee's Concerns

The Alabama Advisory Committee began its investigation in 1976 to learn what actions were being taken by the State of Alabama to obey the directives of the Federal court in *Frazer*. The Advisory Committee also wanted to find out what was being done to achieve equal opportunity in employment for women in all 70 State agencies. The Advisory Committee's concerns extended, also, to gubernatorial appointments to boards and commissions. Although such appointments are a matter of executive discretion and are not covered by Federal nondiscrimination laws, they are considered by many people to be barometers of commitment to equal opportunity.

[7] NAACP v. Dothard, 493 F.2d 614 (5th Cir. 1974).
[8] U.S., Department of Justice, Civil Rights Division, Sex Discrimination Cases, May 1, 1977.

2. Actions and Attitudes

The gradual process—from 1968 through 1976—of bringing virtually all Alabama State agencies under the jurisdiction of the Federal court has had a positive effect. Alabama, accepting the directives of the court in *Frazer*, is moving surely but slowly toward affirmative action in State government employment.

Financial Sanctions

Beyond admonitions from the bench, Alabama agencies face serious sanctions from the Federal agencies that appropriate money to the State. In the case of one Alabama agency, the consequence of noncompliance with Federal guidelines was immediate. Governor George Wallace said that after allocating $2,700,000 for road construction "where deaths had been occuring. . . .The Congress passed a law, gave the Governor the right to allocate. . .but one little bureaucrat in Atlanta is holding the project up because they don't like something in the highway department." Actually, the Federal Highway Administration of the U.S. Department of Transportation (DOT) had not withheld funds; the agency had only delayed the funds. According to the Federal Highway Administration's Regional Director, Jim Lacey, because of dissatisfaction with the internal employment situation, DOT issued a "show cause notice" in August 1976 requesting reasons why *all* Federal highway monies for Alabama should not be suspended because the Alabama Highway Department was not in compliance with Federal guidelines. The department submitted an affirmative action plan in August 1976, and as of July 1978, that plan was still under review in Washington.[1]

Perhaps it was the awareness of the Federal Government's authority to withhold considerable sums of money or the dawning of a new political day in Alabama but, whatever the impetus, Governor George C. Wallace had responded to Judge Johnson's order of August 20, 1976, in an uncharacteristic manner. He called together the State agency administrators and told them that he, chief executive of the State, viewed equal employment opportunity as the law of the land and that they should put forth their best efforts to comply. The Governor's words drew a "bravo" from the *Montgomery Advertiser*. In the lead editorial on September 19, 1976, entitled "Wallace Has Finally Learned a Lesson," the newspaper noted:

> You could hardly believe it was the same George Wallace who built his reputation on defiance issuing a memo soliciting the support of all department heads in making Equal Employment Opportunity a reality in state government. . . .Wallace even seems to have embraced the fact that, apart from the court order, it is only morally right to give equal employment opportunities to blacks. . . .He's come a long way from the schoolhouse door.

Governor Wallace had not been practicing what he preached to the administrators, however. The hundreds of personal appointments he had made to Alabama's State boards and commissions—many of them powerful regulatory bodies—contained few blacks and even fewer women. "Less than one/hundreth of 1 percent of Wallace's appointments have been blacks," said Pamela Horowitz, attorney for the plaintiffs in *James v. Wallace*, quoting from the figures presented to the Federal court in 1975. Judge Johnson ruled in the Governor's favor and the decision was upheld by the U.S. Court of Appeals for the Fifth Circuit.

The court agreed that "legitimate forces are at work in discretionary appointment cases that do not exist in other discrimination cases." Absent a

[1] Jim Lacey, Regional Director, Federal Highway Administration, U.S. Department of Transportation, telephone interview, July 26, 1978; Emory McClinton, Regional Director of Civil Rights, Federal Highway Administration, telephone interviews, December 1977 and February and July 1978; and Norbert T. Tiemann, Director, Federal Highway Administration, U.S. Department of Transportation, letter to Ray D. Bass, Director, Alabama Highway Department, Aug. 20, 1976.

showing of constitutional violation in his discretionary appointments, the court stated, "The governor must be accorded the right to use subjective criteria in selecting the persons whom he appoints to implement his policies."[2]

Marie Jemison, Chairperson of the Advisory Committee said:

> Nonetheless, the fact remains that no women have been appointed to any important boards by Wallace—only to historical and beautification boards. There are no blacks or women on the personnel board. The Governor does not have to have a court order. He could use his own discretionary powers to see to it that women and minorities are properly represented on boards and commissions.

A few months after the Governor's meeting with department administrators, the Alabama Employment Association filed a suit in the U.S. District Court for the Middle District of Alabama against John S. Frazer "as an individual and as director of the Alabama Personnel Department" for hiring and promoting blacks preferentially; i.e., for "reverse discrimination." In a 1-day hearing of the case, Judge Johnson denied all the plaintiff's claims, stating they would subvert the affirmative action mandates of *Frazer*.[3]

In August 1977, when asked by a member of the Commission's staff how he then felt about affirmative action in State employment, the Governor answered that he thought it was "good to go out and seek people regardless of their race, color, creed, religion, or national origin." He added, "On the other hand, I do worry about sometimes giving a position to somebody who is not qualified just because he belongs to the Baptist Church, instead of the Methodist or vice versa, y'know."

Last year, the Alabama Legislature's Black Caucus managed to have a one-sentence amendment tacked onto the 1977–78 general budget regarding the withholding of funds from State agencies that did not endorse equal opportunity regardless of race, sex, religion; i.e., have an affirmative action plan. "It has some meager symbolic value," said State Representative Tony Harrison, "but that's about all. It's a matter of form rather than substance."

[2] James v. Wallace, 12 EPD par. 11,001, at 4719 (5th Cir. 1976).
[3] Alabama State Employees Association v. Frazer, Civil No. 76-424-N (M.D. Ala., Mar. 16, 1978).

Cooperation at the Top

During the Advisory Committee study, several cordial meetings were held with Alabama's top government officials. The foot-draggers, the administrators with apparent reluctance to comply with Federal antidiscrimination laws and Federal court orders, were found to be in the ranks of middle management. Unfortunately, some of these persons are among those who do the hiring; i.e., are charged with carrying out affirmative action programs in individual agencies. Ultimately, however, the responsibility for implementing federally-mandated affirmative action laws is that of the Governor—with or without a court order.

Alabama Lawyers' Views

The assistant attorney general, Bill Stephens, who has represented the Alabama Personnel Department in *Frazer* since the court order was issued said:

> When I looked at the statistics that Judge Johnson had before him, I couldn't help but agree with the judgment. I personally thought it was horrendous that we didn't have any blacks working in all these different areas.

Stephens went on to say that not only had Alabama accepted the court's order, it had also asked for a dismissal of the suit brought by the Alabama Employment Association that charged that blacks had received preference in hiring and promotion. Stephens remarked, "That's a startling development. Alabama being charged with reverse discrimination."

Alabama's attorney general, Bill Baxley, spoke with surprising candor of past inequities in State employment, "There is no question that there has been past discrimination, particularly racial discrimination." Baxley did not appear to be as sensitive to the existence of job discrimination regarding women, however. He said:

> I don't think sex discrimination is as bad in Alabama as it is in some places. The reason for that is we've had a history of electing women to fairly high office. We elected a lady secretary of state way back in 1950. . . .

On hearing the attorney general's comments, Advisory Committee member Vera Foster, an activist in minority and women's rights, remarked:

> [T]he symbolism of a few females in elevated places—secretary of state, State judiciary, treasury—is to Alabama women as tokenism is to blacks. We're captives behind the Magnolia curtain—trapped in the myth of the southern lady.[4]

The lack of awareness of sex discrimination in State employment by the State's attorney general and other officials could be attributed to the fact that no intensive statistical analysis of employees has been made by job category, salary, *and sex* in connection with the lawsuit against Alabama State agencies. Although the U.S. Department of Justice does have the authority to bring class action cases against State government agencies for discrimination on the basis of sex,[5] the Department has not done so in Alabama or in the other three statewide suits it is litigating.

One Alabama agency had already been found guilty of sex discrimination. In a private class action suit brought under the Civil Rights Act of 1964, Judge Frank R. Johnson, Jr., found the Alabama Board of Corrections' height and weight requirements for counselors to be discriminatory against women. Alabama carried the appeal up to the U.S. Supreme Court, and that Court substantially upheld the district court's ruling.[6]

[4] Vera C. Foster, telephone interview, Apr. 22, 1978.

[5] See, e.g., 42 U.S.C. §2000e–6.

[6] Meith v. Dothard, 418 F. Supp. 1169, *aff'd in part in rev'd in part sub nom.*, Dothard v. Rawlinson, 433 U.S. 321 (1977).

3. Graphic Data Analysis

The Alabama Advisory Committee wanted to determine what State officials were doing, in addition to obeying the specific directives handed down in the *Frazer* case, to achieve full compliance with affirmative action requirements implicit in the court orders.

What, for example, were the Alabama Personnel Department's policies and procedures since the court order on hiring, testing, and promotions from within? Were upward mobility practices being extended to women and minorities? And what impact, if any, were those policies having on practices in the individual agencies? The latter, the study team soon learned, was the hardest to find out.

Data Search

The same act of Congress that established the Equal Employment Opportunity Commission[1] and gave that agency enforcement powers to combat discrimination forbids any EEOC employee at whatever level, administrator or clerk, from making information on individual State government agencies available to the public or even to another Federal agency. Violators are subject to a fine of not more than $1,000 and up to a year in jail.[2]

EEOC's annual reports that are available to the public (usually issued 2 years after State governments submit the data) contain employment statistics by race, sex, and job categories but lump all local government statistics together with those of the State. Combined data are tabulated according to 15 different governmental "functions" such as health, utilities and transportation, community development, fire protection, and sanitation and sewage. Summaries by job category are shown in exhibit 1.

The information on full- and part-time employees and "new hires" is further broken down by standard metropolitan statistical areas (SMSAs). Determining what the picture is in any particular agency or department is virtually impossible from this summary data. During its study, the Advisory Committee used the data in Federal court records and other statistical information that was made available by Alabama State officials.

Rules or regulations do not prevent an individual State agency from analyzing the composition of its work force from the data it collects and files. EEOC guidelines, in fact, recommend this as part of a viable affirmative action program.[3]

Graphic Disparities

What appear to be substantial increases in black employment overall become less than impressive when individual agency statistics are scrutinized. Although the Alcoholic Beverage Control (ABC) Board, for example, doubled its percentage of black employees in a 28-month period, almost all blacks work as warehousemen or custodians.[4] No black employees hold the positions of beverage control agents or inspectors. Judge Johnson had found that over the same period, five agencies actually experienced no change in black employment.[5]

Data on other State agencies reveal similar lack of job status and salary differentials for minorities. When employment data for Alabama are reduced to simple graphic form, stark disparities based upon race and sex can be seen. Blacks, who *have* been able to obtain employment with the State and are 15 percent of the work force, according to the director of personnel, John Frazer, are mostly in the lower and lowest salary level jobs.

Alabama State agencies employ about 6,000 more people than 5 years ago, yet the patterns of where they work and what they do, have changed very little. Exhibits 2 through 6 illustrate the patterns of employment from 1973–77. White males still comprise the biggest proportion of the administrators.

[1] The Civil Rights Act of 1964, as amended (42 U.S.C. §2000e).
[2] *Id.* at §2000e–8(e).
[3] U.S., Equal Employment Opportunity Commission, "Equal Employment Opportunity, Instruction for Filing State and Local Government Report EEO-4."
[4] U.S. v. Frazer, 14 EPD para. 7599, at 4930.
[5] *Id.*

Exhibit 1

Percentage Occupational Distribution of State and Local Government Employees

Summary for Alabama
function: All 15 functions
Units: 54
full-time employees

Equal Employment Opportunity Commission
State and Local Government Information (EEO-4) 1975

Race/ethnic group		Total no. employees	Total percent	Job Category: Off-admin	Prof	Tech	Prot-serv	Paraprof	Off-cler	Skilled	Serv-maint
Total	T	61,507	100.0	3.9	17.6	9.1	11.7	11.2	17.1	9.1	20.3
	M	36,656	100.0	5.0	15.7	9.7	18.4	5.1	4.6	12.3	29.2
	F	24,851	100.0	2.2	20.5	8.3	1.7	20.3	35.6	4.4	7.1
White	T	48,148	100.0	4.8	20.8	10.5	13.3	8.8	19.8	9.1	13.0
	M	29,095	100.0	6.1	18.9	11.9	20.8	4.2	5.4	13.1	19.6
	F	19,053	100.0	2.7	23.6	8.3	1.8	15.7	41.9	3.0	2.9
Minority	T	13,359	100.0	0.6	6.3	4.2	5.9	20.1	7.2	9.2	46.5
	M	7,561	100.0	0.7	3.3	1.1	9.3	8.6	1.5	9.4	66.1
	F	5,798	100.0	0.5	10.1	8.2	1.5	35.1	14.7	8.9	20.9
Black	T	13,138	100.0	0.6	5.7	4.1	5.9	20.3	7.0	9.3	47.2
	M	7,451	100.0	0.7	2.9	0.9	9.2	8.7	1.2	9.5	67.0
	F	5,687	100.0	0.4	9.3	8.3	1.5	35.5	14.6	9.1	21.3
SSA	T	134	100.0	3.7	34.3	11.9	1.5	7.5	31.3	5.2	4.5
	M	75	100.0	2.7	32.0	13.3	2.7	2.7	32.0	8.0	6.7
	F	59	100.0	5.1	37.3	10.2	0.0	13.6	30.5	1.7	1.7
Asian	T	37	100.0	2.7	70.3	0.0	0.0	18.9	5.4	0.0	2.7
	M	10	100.0	0.0	90.0	0.0	0.0	0.0	0.0	0.0	10.0
	F	27	100.0	3.7	63.0	0.0	0.0	25.9	7.4	0.0	0.0
Indian	T	11	100.0	9.1	9.1	9.1	0.0	9.1	27.3	0.0	36.4
	M	3	100.0	0.0	33.3	0.0	0.0	0.0	0.0	0.0	66.7
	F	8	100.0	12.5	0.0	12.5	0.0	12.5	37.5	0.0	26.0

Note: Minority includes category entitled "other" not shown separately.
Source: U.S. Equal Employment Opportunity Commission.

Some women and a miniscule percentage of blacks have managed to rise to supervisory levels. Women—white and black—make up the vast clerical force. The majority of the maintenance and custodial workers are black. As the graphic representation of job categories indicates (see appendices A–G), most women are doing stereotypically female work. In 1976 four out of five people classified as "office clerical" were women and, also, two out of three paraprofessionals.

Salary Differentials

In January 1978 Commission staff conducted an informal random sampling of 1977 salaries for white males, minority males, white females, and minority females in each of the eight job categories listed by EEOC on its State reports: officials and administrators, professionals, technicians, protective services, paraprofessionals, office and clerical, skilled crafts, and service and maintenance.[6]

Some of the findings in the sampling cut across the 15 governmental function breakdown specified by EEOC (e.g., public welfare, police protection, health) and represented five standard metropolitan statistical areas. Some of the findings in the sampling were not surprising. Economic inequities of both women and minorities were revealed within each job category. Among employees drawing a salary of $25,000 or more, none was black.

The sampling indicated that not only are the majority of women in Alabama State government in the lowest salary level jobs—office and clerical, paraprofessional, and service and maintenance—they are also at the bottom pay ranges *within* each of the job categories.

Women are modestly represented among persons drawing top pay in the office and clerical classification—a category in which women predominate and one with top salary levels of $10,000 to $16,000. However, no women, white or black, showed up in the salary sampling in the top-pay ranges in the other seven categories.

[6] Random sampling conducted by Miriam Grayboff of the Commission's staff and Joanne Oates, Alabama Personnel Department, Jan. 20, 1978. Ten to 15 EEO-4 forms were scanned for salary, sex, and race information from piles of 60 to 70 forms representing State employees in eight job categories in five different standard metropolitan statistical areas in Alabama.

Exhibit 2

Alabama Employees by Race and Sex in Job Categories, 1973

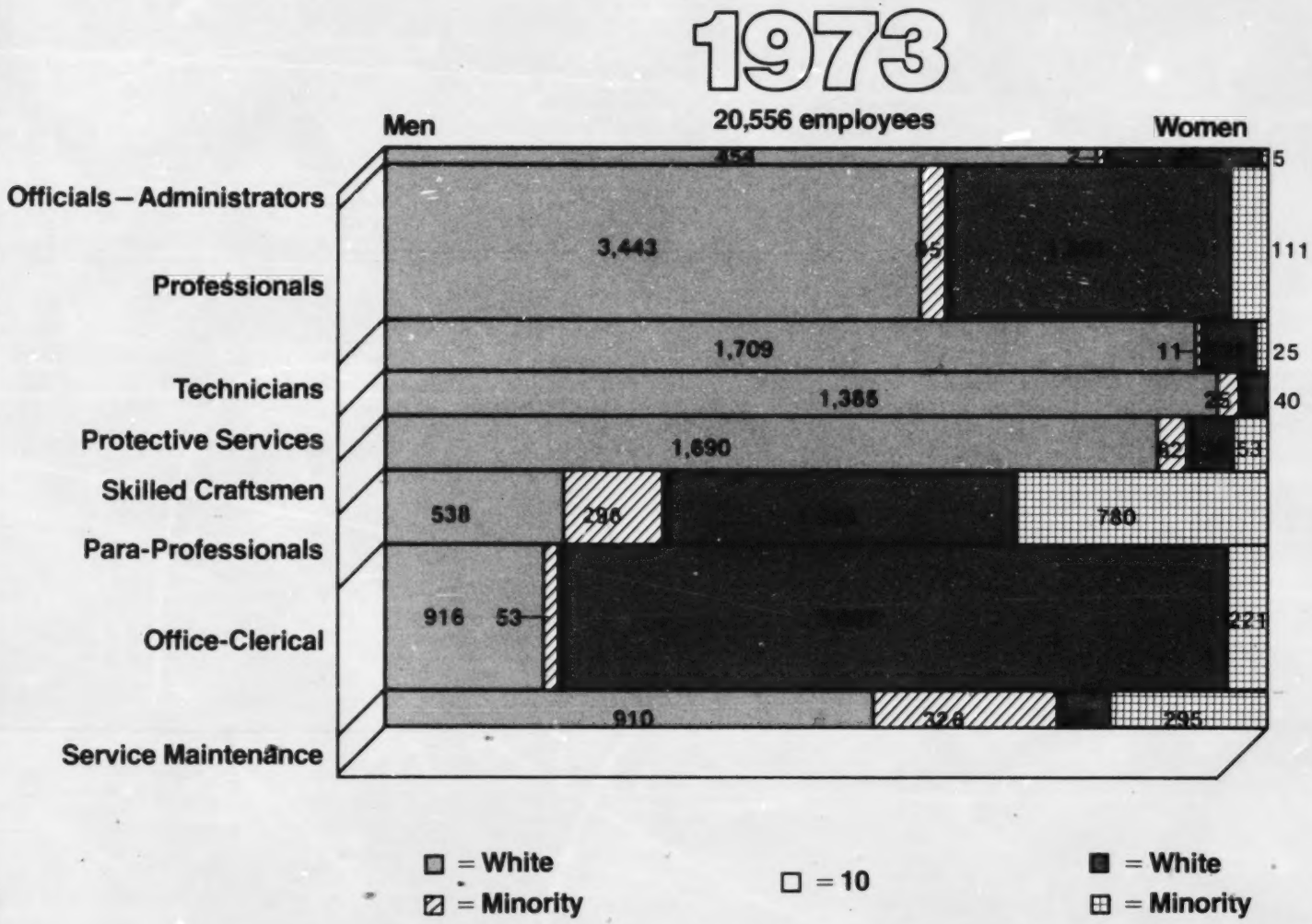

Exhibit 3

Alabama Employees by Race and Sex in Job Categories, 1974

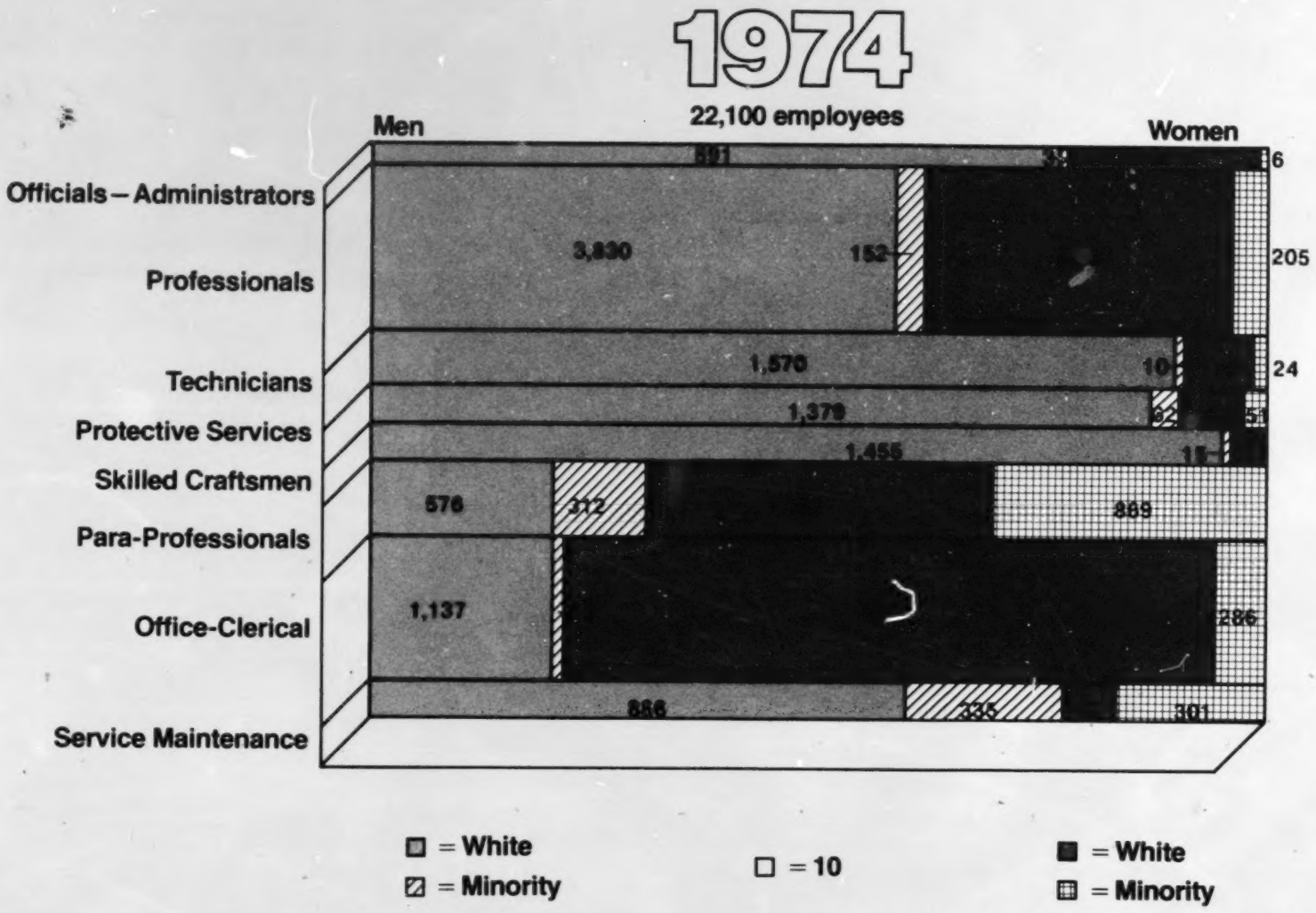

Exhibit 4

Alabama Employees by Race and Sex in Job Categories, 1975

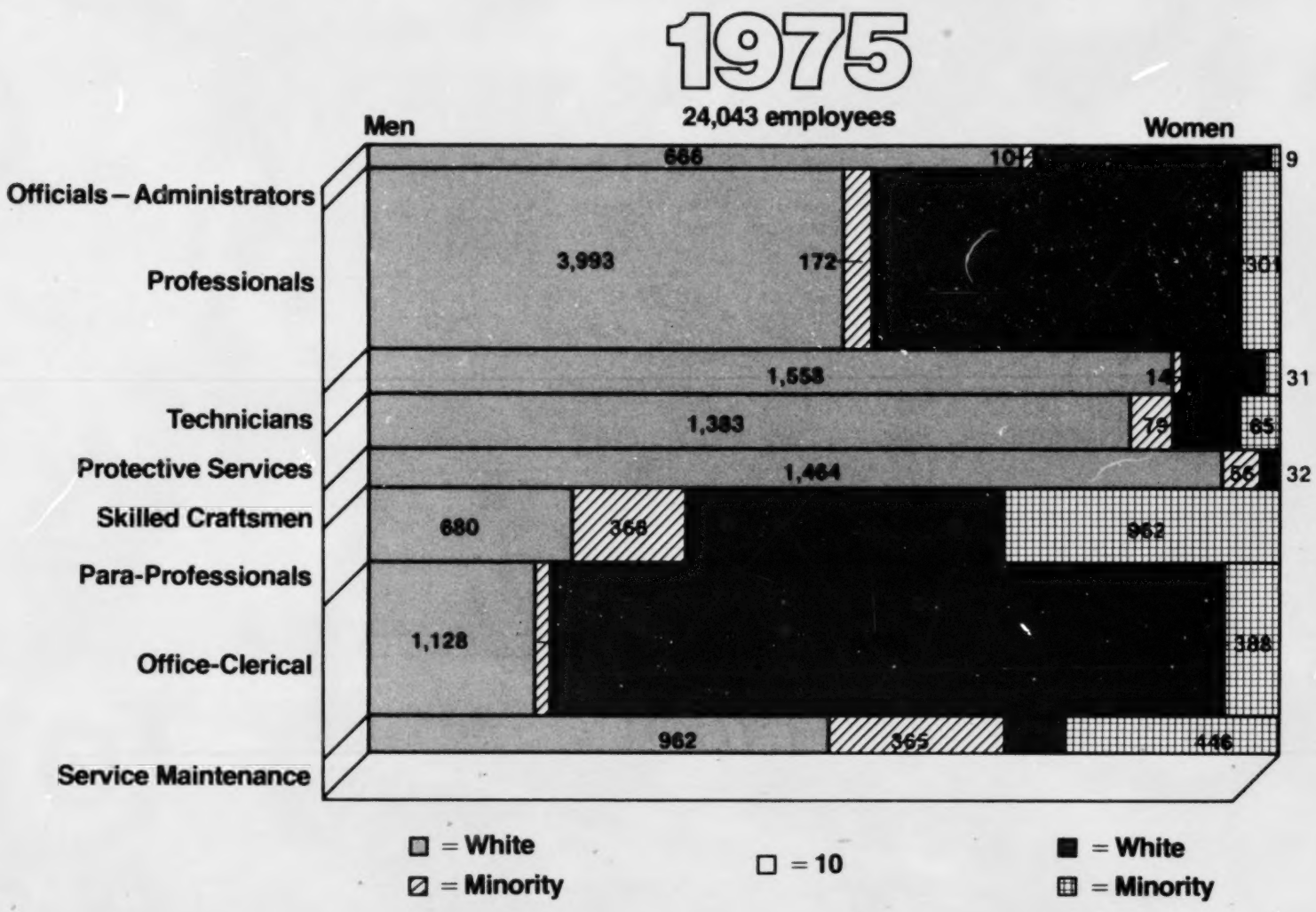

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Exhibit 5

Alabama Employees by Race and Sex in Job Categories, 1976

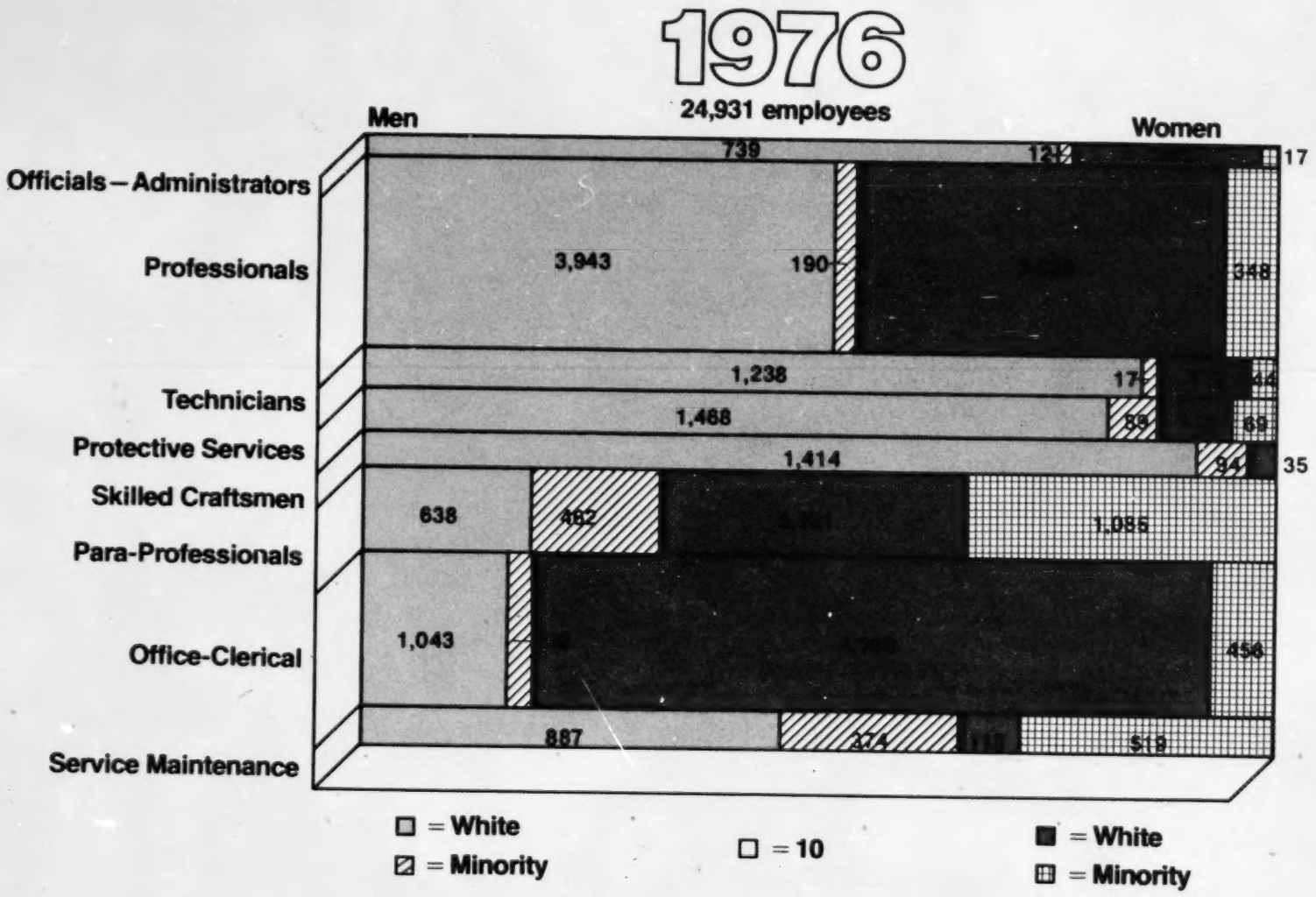
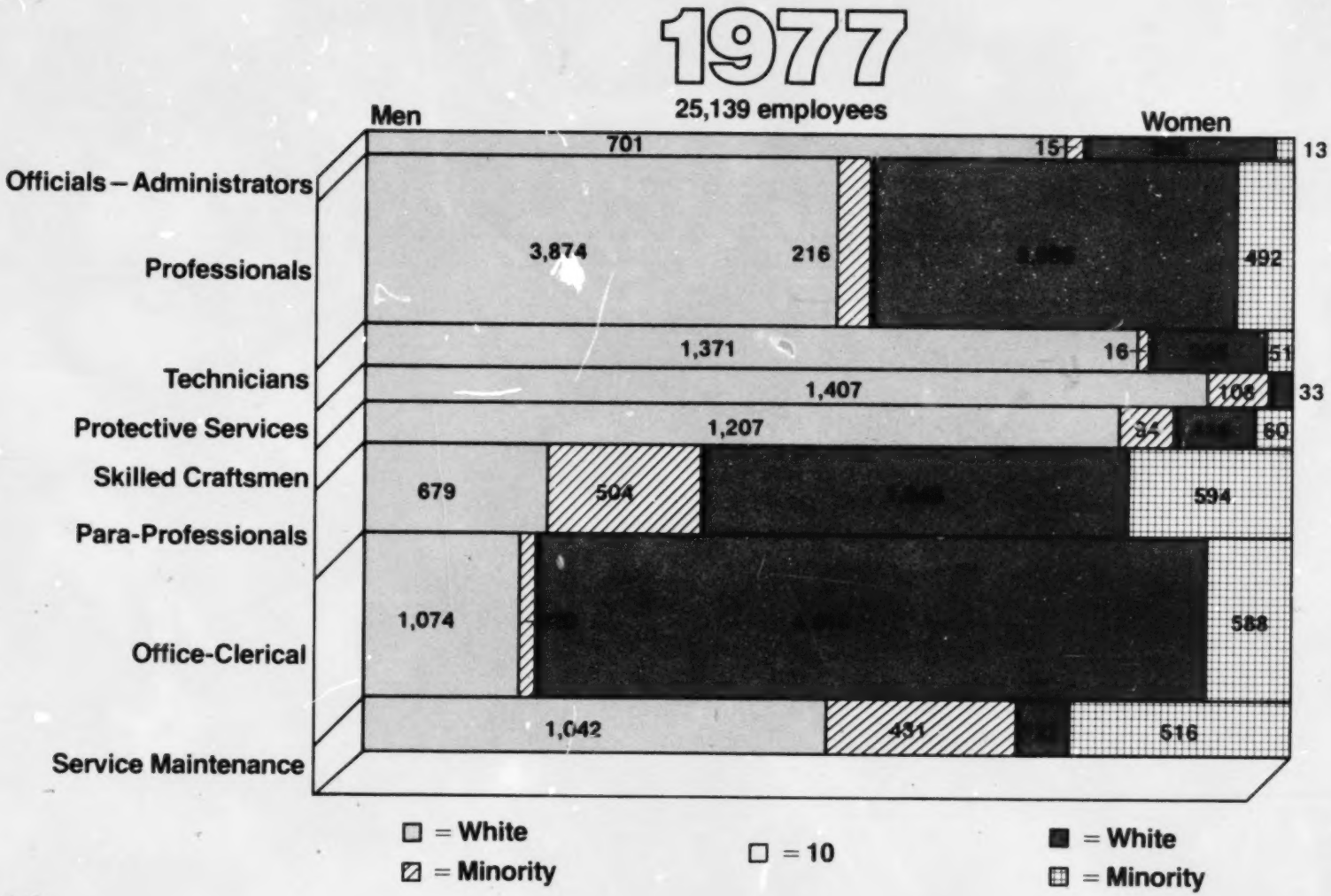


Exhibit 6

Alabama Employees by Race and Sex in Job Categories, 1977



4. Testing

Adverse Racial Impact

About 99 percent of all Alabama employees take written tests to qualify for their jobs, according to the assistant attorney general, Bill Stephens. But the U.S. district court ruled in the *Frazer* case that the tests the personnel department used to certify potential employees could no longer be used. The court found that the tests had an adverse racial effect: black applicants were eliminated more often than were white applicants. The court also determined that the tests had not been validated for their relation to job performance. In addition, examinations for many classified positions had not been conducted on a continuous basis; i.e., once a register of certified applicants was established, no one was added nor were any tests given for the position until the register was depleted.

Those blacks who succeeded in passing the tests, the court also found, tended to score lower on the average than white applicants and, therefore, the blacks were put at the bottom of the employment registers—a position from which they were rarely hired. When the court permanently enjoined the Alabama Personnel Department from engaging in all employment practices that had the purpose or effect of discriminating on the basis of race, a ban on the tests then in use was included. To be approved by the court, all tests for employment first had to be validated in accordance with EEOC (Equal Employment Opportunity Commission) procedures and cleared by the Justice Department.

New Tests Developed

In an August 1977 interview, the director of personnel, John Frazer, was asked if there had been a significant increase in minority employees during the year or whether the fact that the State did not have validated tests was holding them up. Frazer replied, "I wouldn't want to say that was holding us up because the court objects to our saying that. Nonetheless, we do have a great many minority applicants waiting to take the tests, particularly clerical tests." He acknowledged that while the department was preparing new tests that could be approved by the Justice Department, the court did permit them to hire on a "provisional" (temporary) basis. Frazer stated in a September 12, 1978, letter to Bobby D. Doctor, Director of the Southern Regional Office of the U.S. Commission on Civil Rights, that employment on a provisional basis is authorized by Alabama law and has always existed as a means of employing personnel when there is no appropriate register of eligibles.

The assistant director of personnel, John Reynolds, said that beside employing outside consultants, the department was using the "expertise of job incumbents," including many minority employees, to develop the new tests that would be task related to the work new employees would be hired to do.

Tests Pass the Test

The effort and money invested in validating the tests are beginning to pay off. By May 1978, out of 47 redesigned tests submitted to the Justice Department, 19 had been fully approved, another 19 were conditionally approved for interim use, 3 disapproved, and several more were still being studied. A list of those State jobs and their validation status is shown in exhibit 7. All in all, through implementation of the 1976 court order, Alabama probably is on its way to having one of the most racially bias-free sets of employment tests in the country—certainly, in the South.

New Opportunities

One specification ordered by the court is that blacks employed by the defendant agencies in low-level permanent positions are to be notified of their eligibility to apply for higher rated positions and to be furnished with forms on which they can indicate the jobs of interest to them.

Exhibit 7

Status of Validation Studies of Employment Tests, May 24, 1978

Approved (19)

ABC Store Cashier
Accounts Examiner I
Accounts Examiner II
Activity Program Aide II
Beverage License Inspector I
Capitol Hostess
Classification Specialist I
Docks Guard
Information Specialist I & II
Microbiologist I
Parole and Probation Supervisor I
Personnel Assistant I
Personnel Assistant II
Radio Operator I & II
Rehabilitation Counselor I
Revenue Examiner I
Special Education Teachers' Aide
Unemployment Claims Examiner I
Valuation Analyst I

Interim Use (19)

Account Clerk I & II
Accountant I & II
Activity Program Aide I
Beverage Control Agent I
Clerical — Clerk I & II; Clerk Typist I & II; Clerk Steno I & II (verbally approved)
Computer Systems Operator I
Computer Systems Operator II
Conservation Enforcement Officer I
Disability Determination Examiner I
Environmentalist I & II
Forest Ranger I
Graphic Arts Operator
Personnel Analyst I
Security Officer I
Seed Analyst I
Statistician I
Statistician II
Youth Services Aide Trainee
Youth Services Counselor Trainee

Disapproved (3)

Disability Determination Examiner Assistant
Employment Counselor I
Employment Interviewer I & II

Have not heard from (6)

Accounts Examiner III (Submitted 5/12/78)
Applications Programmer Trainee (Submitted 5/15/78)
Engineering Assistant I
Store Clerk (Submitted 5/22/78)
Unemployment Insurance Field Deputy (Submitted 5/12/78)

Source: Alabama Personnel Department.

The comments of a warehouseman working in the back room of a State liquor store revealed that at least one defendant agency, the Alcohol Beverage Control Board, was obeying that directive. The ABC worker said he had been an Alabama State employee for several years and had tried in the past to qualify as a store clerk, but he failed to pass the written test. He said proudly:

> They passed a law in Washington, I think. Now they have to examine and grade you on your experience. I think that's right. . . .I took the new exam. It was oral. I passed it; they gave me a 95.

5. What Could Be Done

Alabama has improved its hiring and promotion practices regarding women and minorities, but the changes have been more quantitative than qualitative. A substantial increase in the number of black employees has come about since the August 1976 Federal court order. About 3 out of 10 new employees hired in 1977 were black, and that brought the percentage of minorities in State government up to 15 percent. This percentage, however, is not consistent throughout all State agencies. Some agencies employ few minorities. The highway department, with a staff that is 5 percent black, is an example. On the other hand, the industrial relations department, which receives the bulk of its funding from Federal sources, has a staff that is 19 percent black, according to Alabama's assistant attorney general, Jerome Weidler. That department has not only hired certified black applicants referred by the personnel department but is recruiting at colleges around the State to find blacks for mid- and upper-level positions.

The industrial relations' recruitment "program" (i.e., one recruiter) is used by several of the other Alabama State agencies as well. But a few recalcitrant agency administrators have stopped hiring altogether rather than implement affirmative action. This fact was revealed during the unsuccessful suit brought by the Alabama State Employees Association in March 1977 against the personnel department for alleged "reverse discrimination." The court promised to deal with these administrators later, when Alabama's progress in the *Frazer* case is heard.

Affirmative Civil Servants

Affirmative action is not only the law of the land, it is good management practice, especially inside government. State agencies have no product to sell, nothing to market. They are creatures of legislatures and executive officers and are established to render particular services to the public. Where required, effectively implemented affirmative action ensures representation of women and minorities in private industry, as well as in public employment, in numbers closely proportional to their presence in the labor force. Because the nature of public employment is to represent and serve *all* of the people, in no other employee group is affirmative action more critical.

Therefore, Alabama State agency administrators, who do not seem to comprehend the importance of having staffs representive of all ethnicities and balanced by sex, should receive inservice training about the importance of affirmative action.

Appointed mid-level administrators, who do the actual hiring in individual agencies and who show no intention of affording job applicants and employees equal opportunities, should be disciplined, including but not limited to dismissal for incompetence as public servants. Administrators, who are protected by tenure but do not fulfill the legal requirements of their position, should be demoted to work that does not include responsibility for meeting Federal affirmative action laws.

Executive Appointments

Few blacks and hardly any women have been appointed by Governors of Alabama in this century to the scores of Alabama boards and commissions. The Alabama Advisory Committee believes that this would be a perfect arena in which the new Governor could demonstrate affirmative leadership.

The Governor should use his discretionary powers—invested in him by the State laws and State constitution—to ensure that members of his cabinet, policy-making boards, and commissions are representative of the Alabama constituency he serves.

Legislative Action

"We Defend Our Rights" reads the banner clutched by the eagle on the seal of the State of Alabama. But what rights do Alabamians have under the State? All suits involving denial of civil rights

brought into State courts must be filed under Federal laws. Thus, Alabamians have to rely on Federal laws for protection of civil rights.

Alabama, the proud seat of the Confederacy, defender of the rights of States, has the power, through action by the legislature, to define just what rights Alabama affords its own citizens. Alabama could thereby join the majority of States that have extensive State laws concerning the civil rights of their citizenry.

Many States, including several in the South, have not only enacted fair employment practice laws but also have set up human rights commissions to take complaints, investigate, and, in some cases such as Kentucky and Tennessee, enforce civil rights laws. Alabama should do likewise.

The Federal Government defers such responsibilities to State bodies that are so constituted. The 1964 Civil Rights Act that established the Equal Employment Opportunity Commission provides for, in section 709(b), allocation of Federal funds to assist States in promoting their own discrimination monitoring efforts.

John S. Frazer, director of personnel for the State of Alabama, said he thought many administrators would feel more comfortable working directly with a State-based equal opportunity agency instead of the Federal EEOC. Such an Alabama Commission could be enpowered to handle discrimination charges against private companies as well as against State government agencies.

Could any Alabama legislator resist voting for the establishment of an Alabama human rights commission, especially if it were to be supported, in part, with Federal money?

Access to Employment Data

The Federal law that established the U.S. Equal Employment Opportunity Commission prohibits disclosure of data by EEOC other than in summary form. While the law that binds EEOC to "confidentiality" is a mandate of questionable merit, nothing prevents the State of Alabama from publishing the employment statistics each agency collects to fulfill EEOC reporting requirements. Federal affirmative action program guidelines, in fact, encourage such public disclosure. Only when statistical breakdowns are easily available can the public determine whether responsible officials are acting responsibly in their hiring and promotion practices.

What better way to demonstrate to Federal funding agencies, to the Department of Justice, to the Federal court, and to the Alabama citizenry the State government's wholehearted commitment to equal employment opportunity than to show the progress graphically in an annual affirmative action report?

The Alabama Advisory Committee recommends that the Governor require the personnel department to issue the tabular data it assembles in a yearly report. The information should contain analyses as well as numerical listings and include data breakdowns by race, sex, job category, and salary level.

Federal Enforcement

The egregiously few women in decisionmaking and policy positions, as well as the disparities in salaries paid to men and women within the same job classification, strongly indicate that the U.S. Department of Justice should expand the *Frazer* suit to protect and ensure equal employment opportunity for women in Alabama State employment.

Pending action by Justice, there is an immediate need to have a coordinated review of all State agencies receiving Federal funds directed specifically at problems of sex discrimination within Alabama State government. Thus, the review should focus especially on salary differences between male and female employees.

The Federal Regional Council is capable of coordinating the civil rights compliance reviews of the several Federal agencies that have civil rights responsibilities. Certain Federal agencies (and specifically the Department of Treasury, Office of Revenue Sharing, and EEOC) that are not members of the council should be included in this joint effort.

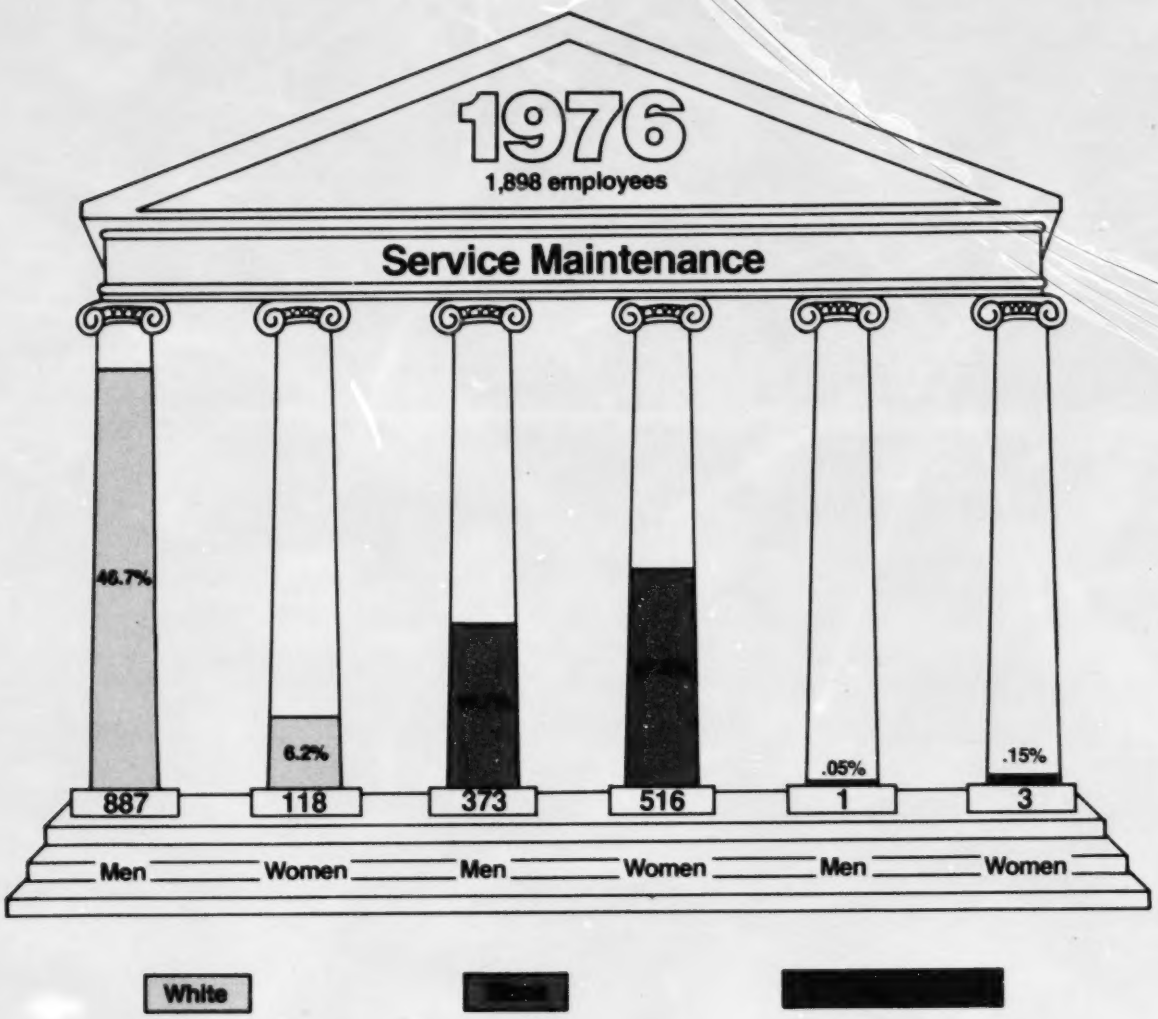
Accordingly, the Alabama Advisory Committee recommends to the U.S. Commission on Civil Rights that the Commission urge the President's Office of Management and Budget to direct the Federal Regional Council (Region IV) to coordinate the comprehensive civil rights compliance review of Alabama State agencies.

For those agencies that demonstrate little sign of, or interest in, affirming equal opportunity in their hiring and promotion programs, the Advisory Committee advises the recourse called for by Federal laws: cutoff of Federal funds.

Appendices

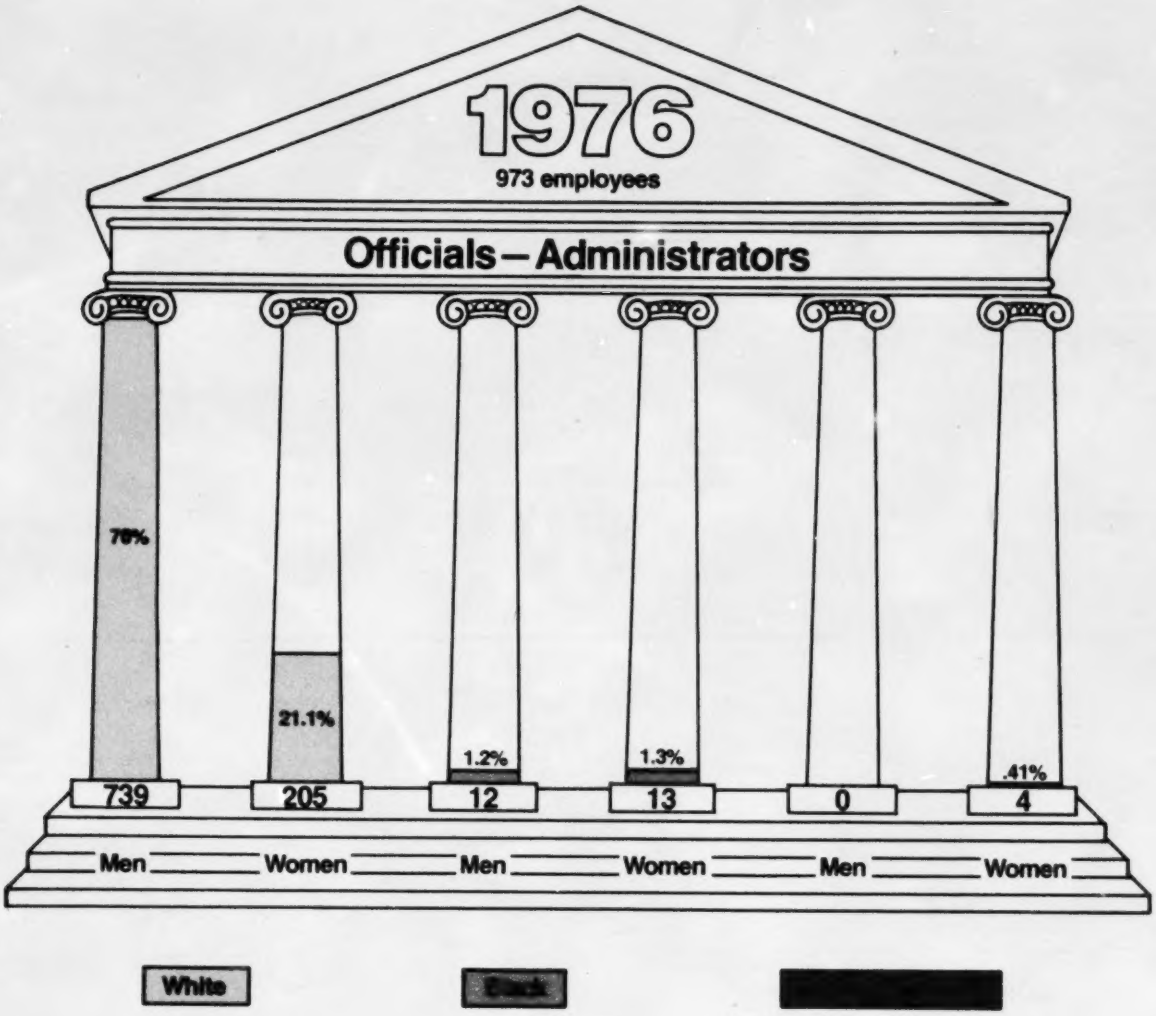
The exhibits on the following pages and those exhibits incorporated in the text are used in the film, *Where Are Women and Blacks?* produced by the Alabama Advisory Committee.

Appendix A



In 1973 minority men and women numbered 623 out of 1,625 service and maintenance workers in Alabama State government. By 1976, there were 893 out of 1,898—an increase from 38 percent to 47 percent, far and above the minority average throughout State jobs: in 1973, 12 percent and in 1976, 13 percent.

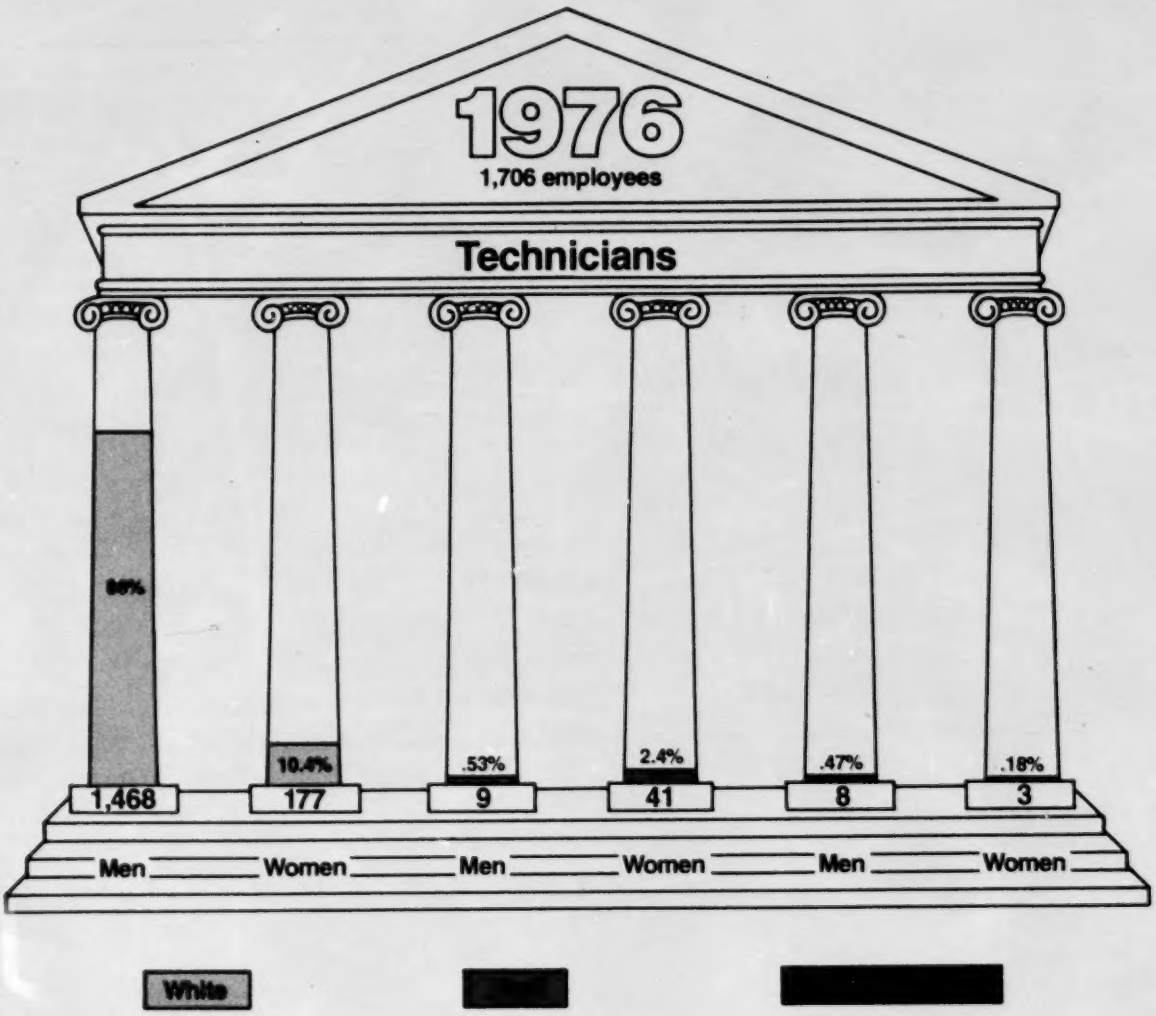
Appendix B


1976
973 employees
Officials – Administrators
76%
21.1%
1.2%
1.3%
.41%
739
205
12
13
0
4
Men
Women
Men
Women
Men
Women
White

Appendix C

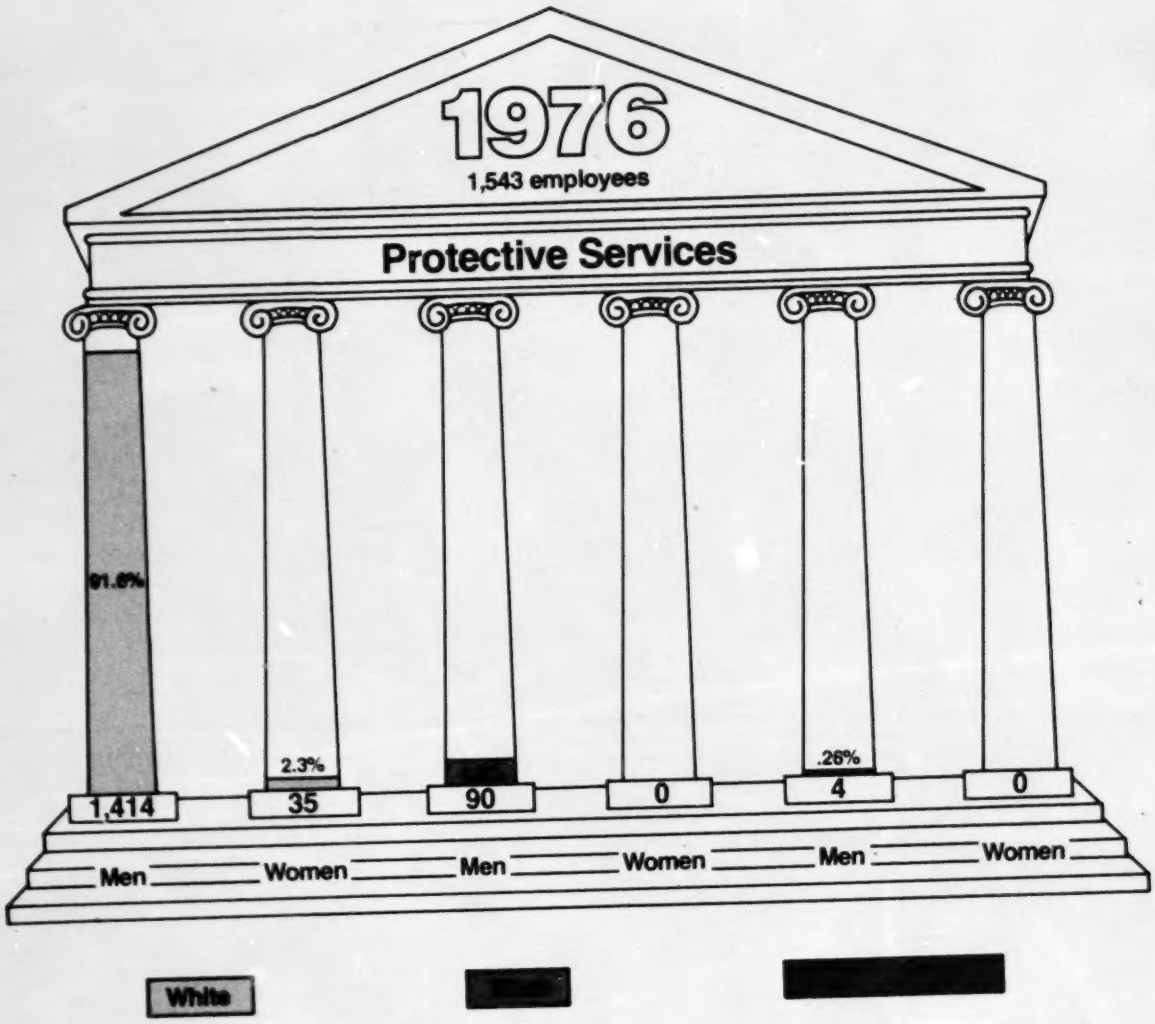
Women who are educated in professions—doctors, nurses, engineers, accountants—do a better job in matching their male counterparts in obtaining jobs. But even in the professional category in Alabama State employment, as in officials and administrators, women tend to be paid less than men.

Appendix D



In a job category such as technicians, in which salaries average $3,000 to $4,000 a year more than for office, clerical, and paraprofessional personnel, over four-fifths of the positions in 1976 were held by male employees.

Appendix E

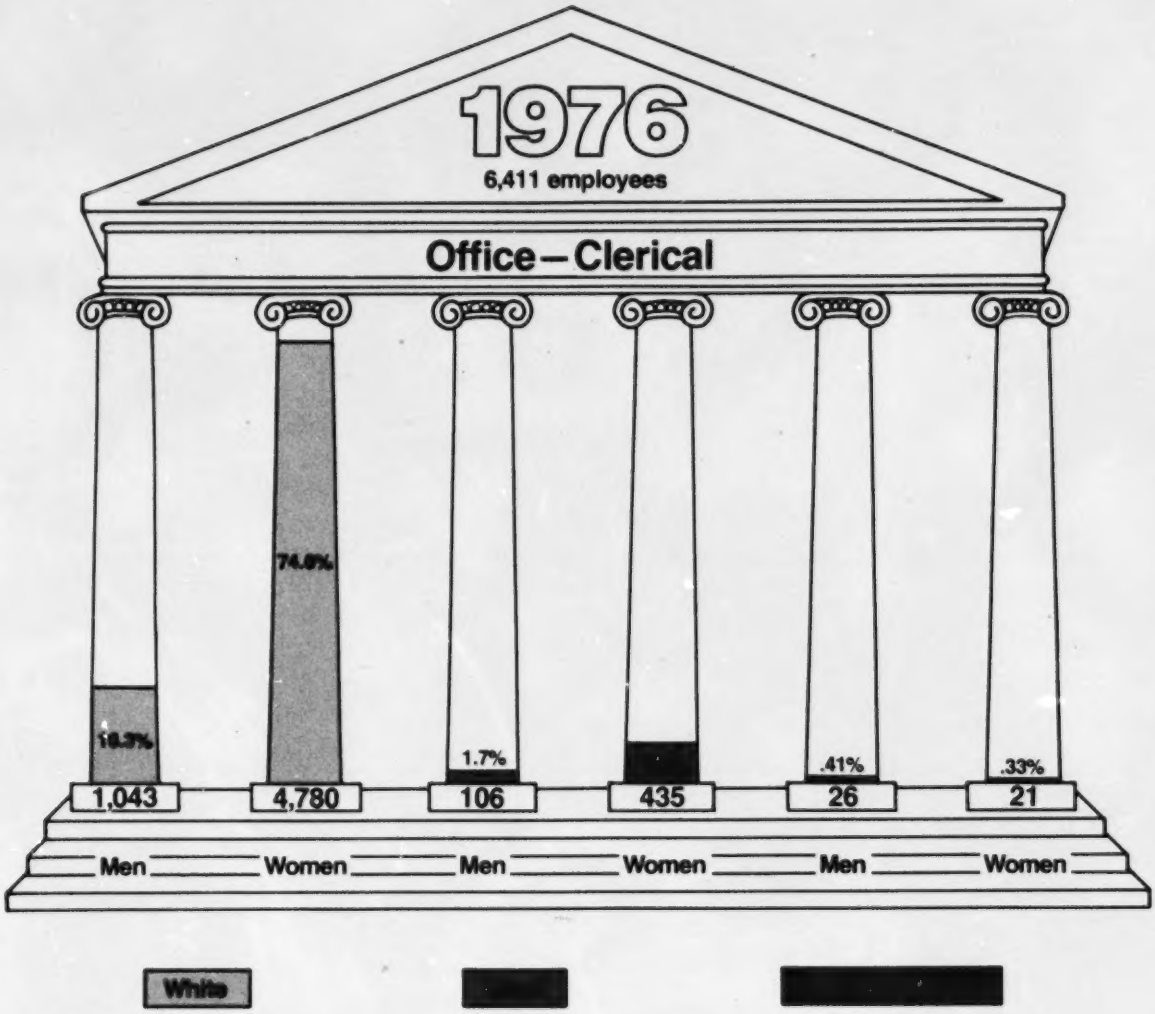


Nine out of every 10 employees who work in Alabama protective services are white males. These jobs, though not demanding particularly high degrees of training and education, pay relatively well – about $4,000 more a year average than jobs in service and maintenance work.

Appendix F

1976
3,316 employees
Para-Professionals
19.2%
34.1%
638
1,131
459
1,077
.09%
3
.24%
8
Men
Women
Men
Women
Men
Women
White

Appendix G



Not only are the majority of the women employed by Alabama State government in the lowest salary level jobs, they are usually at the bottom pay range within each job category. A few women can be found among those in the upper salary range of the office, clerical, and the paraprofessional categories, that they dominate. But the top range here—$10,000 to $16,000—is considerably lower than top pay in other categories such as technicians or skilled craftsmen.

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